Appl. No. 09/808,423
Response Dated December 2, 2009
Reply to Office Action of September 2, 2009

Docket No.: 2556/008
Examiner: Pass, Natalie
TC/A.U. 3626

REMARKS

Summary

Claims 39-75 are pending in this application. Claims 1-38 were previously canceled. Claim 76 is currently cancelled. Claims 39, 40-42, 49, 50, 56 and 62 are currently amended. Support for the amendments can be found throughout the specification and claims as originally filed. No new matter has been added. In the Office Action mailed on September 4, 2009, claims 39-76 were rejected. In view of the following remarks, favorable reconsideration and allowance of the standing claims are respectfully requested.

Claim Objections

At page 2, paragraph 3 of the Office Action, the Examiner objects to the language of claim 76 . Claim 76 has been cancelled, thus making the rejection with respect to this claim moot. Withdrawal of the objection is respectfully requested.

Rejections Under 35 U.S.C. § 101

At page 3, paragraph 5 of the Office Action claims 39-61 are rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. Specifically, the Examiner states that the claims are not required to be tied to another statutory class and can be performed without the use of a particular apparatus. Applicant respectfully traverses the rejections.

Applicant respectfully submits that claims 39-61 are drawn to proper subject matter. However, solely in an effort to further prosecution, independent 39 has been amended to recite, in relevant part: (1) the database is stored in the memory of a computer-based system; (2) the

9

system utilizes a processor to evaluate and verify nutritional data; and (3) the processor creates menu sets incorporating the nutritional data. The inventive method is now clearly tied to a machine or apparatus, i.e., a computer based system. Contrary to the Examiner's assertions, independent claim 39 recites "what" is performing the method steps. Claims 40-42, 49, 50, 56 and 62 have been amended to recite limitations similar to those in claim 39. As stated above, the master diet database is stored in the memory of a computer-based system and a processor of the computer-based system evaluates and verifies nutritional data and creates menu sets incorporating the nutritional data. Claims 40-61 are dependent claims and therefore contain all of the limitations of amended claim 39. For the reasons stated above, claims 39-61 are drawn to statutory subject matter. Withdrawal of the rejection is respectfully requested.

Rejections Under 35 U.S.C. § 112, First Paragraph

At page 4, paragraph 7 of the Office Action claims 39-76 stand rejected under 35 U.S.C. § 112, first paragraph, as not satisfying the written description requirement. The Examiner states that the phrase "establishing a preselected nutritional criteria" in claims 39, 62 and 76 is not supported by the original disclosure. The Examiner requests that Applicant point out the portions of the specification supporting the above-quoted limitations.

In reply, Applicant respectfully draws the Examiner's attention to page 14, line 17 - page 15, line 4, paragraph [0037] of the published version of the application, for a description of the establishment of predetermined nutritional criteria. Because claims 39 and 76, and their respective dependent claims, satisfy the written description requirement, withdrawal of the rejection is respectfully requested.

Appl. No. 09/808,423
Response Dated December 2, 2009
Reply to Office Action of September 2, 2009

Docket No.: 2556/008
Examiner: Pass, Natalie
TC/A.U. 3626

At page 6, paragraph 9 of the Office Action claim 76 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner states that the phrase "a program storage device readable by machine for tangibly embodying a program of instructions executable by said machine to perform a method of facilitating food service management...[...]...said method comprising the steps of: providing a computer-based system...[...]..." is not enabled because it is not clear how a program running on a computer provides a computer-based system. Claim 76 has been cancelled, thus making the rejection with respect to this claim moot. Withdrawal of the rejection is respectfully requested.

Rejections Under 35 U.S.C. § 112, Second Paragraph

At page 6, paragraph 11 of the Office Action claims 62-75 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite. The Examiner states that limitation is "means plus function" language, but that the scope of the "means" limitation is not defined. Claim 62 has been amended to delete the "means plus function" limitation. Applicants respectfully requests withdrawal of the rejection.

Rejections Under 35 U.S.C. § 103

At page 9, paragraph 13 of the Office Action claims 39-40 and 44-76 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kolawa et al., United States Patent No. 6,370,513 ("Kolawa") in view of Cosentino et al., United States Patent No. 6,290,646 ("Cosentino") and further in view of Petot, et al. article: "An artificial intelligence system for computer-assisted menu planning" ("Petot"). At page 19, paragraph 14 of the Office Action claims 42-43 stand

rejected under 35 U.S.C. § 103(a) as being unpatentable over Kolawa, Cosentino, Petot and further in view of Brown, United States Patent No. 6,168,563 ("Brown"). Applicant respectfully traverses the rejections, and requests reconsideration and withdrawal of the obviousness rejections.

Applicant respectfully submits that claims 39-75 define over the cited references whether taken alone or in combination. As stated above, independent claim 39 has been amended to recite, in relevant part: (1) the database is stored in the memory of a computer-based system; (2) the system utilizes a processor to evaluate and verify nutritional data; and (3) the processor creates menu sets incorporating the nutritional data. Claim 62 recites recite, in part, a system comprising a computer-implemented arrangement for establishing preselected nutritional criteria. The system then suggests menu sets in accordance with said preselected nutritional criteria. The presently amended claims require that the inventive *system* evaluates nutritional data and establishes preselected nutritional criteria based upon this data.

In contrast, Kolawa is directed to an automated recommendation system that provides recommendations based on user preferences. In the case of food, the user preference generally comprises taste. As acknowledged by the Examiner, Kolawa does not teach providing a remote link to food service professionals, collecting information from food service professionals, or suggesting menu sets to the food service professionals. See Office Action page 11. Applicant respectfully submits that Kolawa neither teaches nor suggests a system which evaluates nutritional data and establishes preselected nutritional criteria based upon this data. The automated recommendation system of Kolawa simply offers suggestions based upon criteria

provided by the user. The system of Kolawa does not evaluate the inputted data based upon preselected criteria, as now recited in claims 39 and 62.

Kolawa further teaches selecting foods for a menu based on user preferences and feedback received from the user. See, for example, column 11, lines 3-7 and 40-49. As a further illustration, a user preference vector may be modified if a recommended recipe was rejected because it was too spicy. This is clearly distinguishable from the language of claim 39 in that no use of verified nutritional values is even discussed with respect to menu selection.

Applicant respectfully submits that Cosentino fails to satisfy the deficiencies of Kolawa. Cosentino teaches a method of monitoring and transmitting physiological and wellness parameters of overweight/obese patients to a remote site where a *weight management professional or nutritionist* evaluates the parameters and can supervise and provide nutritional guidance to remotely located individuals.

Cosentino at column 2, lines 42-47, in relevant part, teaches:

> Furthermore, the individual can participate on a weight management program while under professional supervision from the privacy and comfort of their own home. Moreover, the apparatus allows *the weight management professional to intervene and adapt* the individual's diet and exercise routine based on the weight and wellness information received.

(Emphasis added). Cosentino further teaches an apparatus which measure a patient's weight and then transmits this measurement to a medical care provider. Cosentino at column 11, lines 32-36, in relevant part, further teaches: "If significant symptoms an/or excessive weight changes are reported, the system alerts the *medical care provider who may provide a change* to the patient's medication dosage, or establish further communication with the patient such as placing a

Appl. No. 09/808,423
Response Dated December 2, 2009
Reply to Office Action of September 2, 2009

Docket No.: 2556/008
Examiner: Pass, Natalie
TC/A.U. 3626

telephone to the patient." (Emphasis added). Cosentino provides for an apparatus to monitor and transmit data to a remote site "whereby a medical professional caregiver can evaluate such physiological and wellness parameters and make decisional regarding the patient's treatment." Column 12, lines 50-54. In contrast to Applicant's presently claimed invention, Cosentino teaches a system which relays information to a user, wherein the user evaluates the information and makes decisions based upon the data. Cosentino neither teaches nor suggests a *system* which establishes preselected nutritional criteria and suggests menu sets in accordance with the preselected nutritional criteria to a food service professional, as recited in the currently amended claims.

Finally, Applicant submits that Petot and Brown fail to remedy the above identified deficiencies of Kolawa and Cosentino. Petot describes several systems used to assist in menu planning. See, for Example, page 1014, column 1, paragraph 2 to column 2, paragraph 1. Petot, however, fails to teach or suggest a *system* which establishes preselected nutritional criteria and suggests menu sets in accordance with the preselected nutritional criteria to a food service professional. For instance, Petot teaches at page 1011, right column, second paragraph: "PRISM displays the menu and allows the *user* to conduct a "what if" analysis, adding or deleting foods, and seeing the effects on nutrient content." (Emphasis added). The system in Petot "...allows *users* to propose and evaluate creative food combinations." (Emphasis added). Petot, page 1011, right column, fifth paragraph. Petot further describes the CAMPER program (a hybrid program created by the authors) as follows: "With CAMPER, the user may ask to add, delete, or replace foods in the recommended menu." Petot, page 1012, left, column, third paragraph. Thus, the teaching of Petot is directed to an artificial intelligence algorithm to assist in the menu

planning on a local computer. Petot, page 1010, column 1, paragraph 3 to column 2, paragraph 1. Petot does not teach a *system* which establishes preselected nutritional criteria and suggests menu sets in accordance with the preselected nutritional criteria to a food service professional, as not recited in amended independent claims 39 and 62.

Brown teaches a system and method to remotely monitor a patient. The system includes a health care provider monitor and a remotely programmable patient apparatus. See Abstract. The system monitors the patient health condition through a series of queries and transmits this data to the health care provider. See Col. 25, lines 26 - 42. The patient information is then processed by the health care provider. See Col. 29, lines 12-22. For Example, Brown at column 21, lines 32-53 teaches tracking a patient's blood glucose readings in connection with food information entered into the system by the patient along with the blood glucose readings. More particularly, Brown, however, does not teach a *system* which establishes preselected nutritional criteria and suggests menu sets in accordance with the preselected nutritional criteria to a food service professional, as not recited in amended independent claims 39, 62 and 76. In Brown, the analysis and evaluation of the patient data is performed by the health care provider and not by the monitoring system. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claims 39 and 62.

For at least these reasons, Applicant submits that claim 39 is patentable over the cited references, whether taken alone or in combination. In addition, claim 62 recites features similar to those recited in claim 39. Therefore, Applicant respectfully submits that claim 62 is not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 39. Accordingly, Applicant respectfully requests removal of the

Appl. No. 09/808,423

Response Dated December 2, 2009

Reply to Office Action of September 2, 2009

Docket No.: 2556/008

Examiner: Pass, Natalie

TC/A.U. 3626

obviousness rejection with respect to claims 39 and 62. Furthermore, Applicant respectfully

requests withdrawal of the obviousness rejection with respect to claims 40-61 and 63-75 that

depend from claims 39 and 62 respectively, and therefore contain additional features that further

distinguish these claims from the cited references.

Appl. No. 09/808,423
Response Dated December 2, 2009
Reply to Office Action of September 2, 2009

Docket No.: 2556/008
Examiner: Pass, Natalie
TC/A.U. 3626

Conclusion

It is believed that claims 39-76 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 412-918-1100 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the previously authorized deposit account.

Respectfully submitted,

METZ LEWIS LLC

By __/Barry I. Friedman/_____
    Barry I. Friedman, Reg. No. 33,695
    11 Stanwix Street, 18th Floor
    Pittsburgh, Pennsylvania 15222

    Attorneys for Applicant

(412) 918-1100